

Acting Chief,

10 February 1956 25X1A

Assistant General Counsel

Patent Infringement

1. In consideration of the general problem of initiating action against Bloc trade fair exhibitors for infringement of U. S. patents, you advise that in the development of an industrial project in India the USSR may infringe a U. S. patent held by an American firm. Accordingly, you have requested information concerning the treaty relations between the United States and India on the subject of patents and specifically, whether India accepts the filing of documents under the Brussels Convention as a basis for infringement suits there.

2. Our research discloses that there are no bilateral treaties between India and the U. S. regarding patents, and in addition, that it is not a party to the multilateral treaty for the Protection of Industrial Property (Brussels Convention), as is the United States. In these circumstances, the protection which may be available to an American firm in India is to be determined by reference to Indian law, specifically the Indian Patents and Designs Act of 1911, as amended.

3. An examination of the Indian Patent Act discloses that to protect an invention, it must be covered by an Indian patent; that the procedures for securing patents are somewhat similar to those prescribed by the laws of the United States; that anyone, whether a citizen or not may apply; that the grant is "the exclusive privilege of making, selling and using the invention throughout India" for a period of sixteen years; and that only with respect to applications previously filed elsewhere within the United Kingdom is any preferential treatment by way of priority granted. There is attached for your general information, a summary of the Act of 1911, as amended.

4. We assume that the American firm to which you refer has not secured an Indian patent and that the sole basis for the possible allegation of infringement is the existence of one granted by the U. S. In these circumstances and in view of the settled

principles that a U. S. patent is generally co-extensive only with territory under U. S. jurisdiction and that infringement of it can not be predicated upon acts consummated in a foreign country, it is our view that there is no protection available under Indian law. And we have grave doubts whether some measure of protection could be obtained by filing now in as much as the statute permits the granting of a patent to be opposed by anyone on the grounds of the invention's previous public use in India.

5. Of necessity the above is but a general reply to your inquiry on the basis of information submitted, if you feel we can be of any assistance in the further development of this or similar matters please so advise us.

25X1A

Distribution:

Orig. & 1 - Addressee
1 - Subject
1 - Chrono
1 - Roper's